

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000832-001 DT

03/23/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

LYNN R AROUH

v.

ROBERT D PRICE (001)

JAMES T VANBERGEN

GILBERT CITY COURT  
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

GILBERT MUNICIPAL COURT

Cit. No. #92505

Charge:      A) DUI-LIQUOR/DRUGS/VAPORS/COMBO  
                  B) DUI W/BAC OF .08 OR MORE  
                  C) EXTREME DUI-BAC .15 OR MORE  
                  #92505

DOB: 11/12/43

DOC: 11/29/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on February 6, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Gilbert Municipal Court, and the excellent memoranda submitted by counsel in this case.

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Appellant, Robert D. Price, was charged with: (1) Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); (2) Driving with a Blood Alcohol Content of .08 or Greater, a class 1 misdemeanor in violation of A.R.S. 28-1381(A)(2); and (3) Extreme DUI, a class 1 misdemeanor in violation of A.R.S. Section 28-1382. Appellant filed a Motion to Suppress all evidence obtained after an allegedly improper stop and seizure by the Gilbert police officers. The trial court held an evidentiary hearing on Appellant's Motion to Suppress on February 19, 2003. The trial judge denied Appellant's motion finding that Appellant was not stopped by the officers, but voluntarily stopped his vehicle. The trial judge found no seizure of Appellant until after the officers approached the Appellant and noticed a strong odor of alcohol. After the trial judge's ruling, the parties submitted the issues of guilt or innocence to the court and waived their rights to a jury trial. Appellant was found guilty of the charges, and has filed a timely Notice of Appeal in this case.

Appellant claims that the trial court erred in failing to suppress all evidence gathered after an unreasonable stop of Appellant. Appellant claims that the Gilbert police officers did not have a "reasonable suspicion" which would justify the stop of Appellant's vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from the facts, reasonably warrant the police officer's suspicion that the accused, committed, or was about to commit, a crime.<sup>1</sup> These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."<sup>2</sup> A.R.S. Section 13-3883(B) also provides in pertinent part authority for police officers to conduct a "investigative detention":

A peace officer may stop and detain a person as is reasonable necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.<sup>3</sup> In *Whren*<sup>4</sup>, the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they

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<sup>1</sup> *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); *State v. Magner*, 191 Ariz. 392, 956 P.2d 519 (App. 1988); *Pharo v. Tucson City Court*, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

<sup>2</sup> *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed. 2d 621, (1981).

<sup>3</sup> *Whren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

<sup>4</sup> *Id.*

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used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic offense renders the resulting traffic stop reasonable under the Fourth Amendment.<sup>5</sup>

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.<sup>6</sup> An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.<sup>7</sup> This Court must review those factual findings for an abuse of discretion.<sup>8</sup> Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.<sup>9</sup> This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.<sup>10</sup>

In this case, the trial judge entered a detailed order denying Appellant's Motion to Suppress. The trial judge stated:

The defendant was not stopped by the officers in this matter as per his own testimony, the defendant stopped on his own because he had arrived at his place of residence. In addition, the seizure of the defendant in this matter occurred after the officer noticed a strong odor of alcohol emanating from the defendant when the officer approached the car and asked the defendant, "how are you?"<sup>11</sup>

The trial judge's ruling is supported by the record in this case. The Appellant's own testimony at the evidentiary hearing (as cited by the trial judge) clearly established that Appellant was not seized by the Gilbert Police. Appellant had arrived at his home and parked his car. His journey that evening was not interrupted by the actions of the state, but terminated of its own accord because Appellant had reached his destination. The officers' did not seize appellant's person, or detain him in any way, until they noticed the strong odor of alcohol coming from Appellant. This odor of alcohol establishes a reasonable basis for the further detention and investigation of the crime of DUI. Having determined that a factual basis exists to support the

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<sup>5</sup> Id.

<sup>6</sup> *State v. Gonzalez-Gutierrez*, 1987 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Magner*, Supra.

<sup>7</sup> Id.

<sup>8</sup> *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

<sup>9</sup> *State v. Chapple*, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

<sup>10</sup> *State v. Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778; *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

<sup>11</sup> Record on appeal, order of March 3, 2003, by the Honorable John E. Hudson, Gilbert Municipal Court Judge.

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trial judge's ruling, this court also determines de novo that these facts establish a reasonable basis for the Gilbert police officers to have detained Appellant after he voluntarily stopped his vehicle. This court finds no error.

IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the Gilbert City Court.

IT IS FURTHER ORDERED remanding this matter back to the Gilbert City Court for all further and future proceedings in this case.

/s/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT